



Liability for Misdeeds of Animals

General rule

A person is not responsible for injuries caused by an animal unless a specific legal principle says he is.

There are three legal principles that may result in a person being found responsible for the actions of an animal.

Principle #1: The owner or keeper of an animal with vicious propensities known to the owner or keeper is responsible for injuries resulting from those propensities.

The plaintiff must prove

- The defendant is either the owner or keeper of the animal in question.

A *keeper* of an animal is one who “exercises a substantial number of incidents of ownership,” or in other words acts like an owner—feeding, grooming, or otherwise caring for an animal.

A pet-sitter would probably be a keeper, as would a member of the household who, although not the legal owner, routinely cares for the animal. A landlord is not the keeper of an animal owned by a tenant merely by virtue of owning rental property.

- The animal has vicious propensities.

Vicious in this case has an unusual meaning. It does not mean that the animal is malicious or cruel; it means instead that the animal is dangerous, in the sense that something about it is likely to result in injury to another.

A large dog that jumps up on people or plays in a rough manner may be vicious within this definition. (*Sink v. Moore*, 267 N.C. 344 (1966)).

A cat that scratches when it plays is not thereby vicious (*Ray v. Young*, 154 N.C. App. 492 (2002)), nor is a dog that fights with other dogs or chases cars (*Sink*).

The clearest case of *vicious* occurs when an animal has previously behaved in a dangerous way. Evidence that a dog has bitten someone or otherwise behaved aggressively is strong support for a finding that the animal is vicious.

- The owner or keeper of the animal knew of its vicious propensities.

Actual knowledge is not required; it is sufficient if the defendant had information that would have alerted a reasonable person to the potential danger.

Notice to the agent of an owner/keeper of an animal's vicious behavior is treated as notice to the agent/keeper himself. Similarly, notice to a household member is generally sufficient basis to find knowledge on the part of the owner/keeper.

- The injury to plaintiff resulted from the animal's vicious propensity. (Tripping over a vicious dog that bites would not support a finding of liability, at least under this theory.)

Note: It is unclear whether under North Carolina law a defendant can escape liability by showing (1) that he took every step possible to avoid injury; or (2) that plaintiff's own negligence contributed to the injury. Many other states follow a rule of "strict liability" in these cases; that rule essentially says that if a person deliberately chooses to possess a vicious animal, he is responsible for any injury that results, even if he is entirely without other fault or if the injured party was partly at fault. It seems likely that North Carolina would follow this rule, but no case has squarely presented the issue as of yet. Even more unclear is whether the court would apply strict liability to a case in which another animal or other property is injured, as opposed to one in which a person is injured.

Principle #2: The owner or other person in control of an animal is responsible if he fails to use due care to prevent injuries that are reasonably foreseeable, given the general propensities of the animal, and the person injured is one to whom he has a duty.

The plaintiff must prove:

- That the defendant had a duty to the plaintiff.

The law imposes upon every person a duty to use ordinary care to protect others from injury, and so the required element of duty is generally easily met.

An exception may arise, however, when the plaintiff is a trespasser. In such a case, an animal owner is responsible only for willful or wanton conduct.

A concept connected to duty is the requirement that the defendant is the owner or is otherwise related to the animal in a manner making it reasonable to hold him responsible for the animal's behavior. A mere passerby has no duty to protect a person from injury by an animal he neither owns nor controls, for example.

- That the animal injured the plaintiff.
- That the injury was of a type reasonably foreseeable by the defendant.

Most of the appellate cases have revolved around this issue. A recent case, Thomas v. Weddle, 167 N.C. App. 283 (2004), summarized the rules:

- If an animal is wild, an owner is assumed to know that it may behave in a wild (and thus dangerous) way.
- If an animal is large, an owner is assumed to be on notice that its size may present a risk of injury in some circumstances. (e.g., a horse may step on a child's foot).
- If an animal is of a breed known to be aggressive, an owner is held to notice of that fact. (Hill v. Williams, 144 N.C. App. 45 (2001) (Rottweilers are known to be an aggressive breed of dogs).
- If an animal has behaved in a particular manner before, an owner is on notice that it may do so again:

With regard to injuries inflicted by normally gentle or tame domestic animals, the law is clear that the test for liability is whether the owner knew or should have known from the animal's past conduct, including acts evidencing a vicious propensity, that the animal is likely, if not restrained, to do an act from which a reasonable person, in the position of the owner, could foresee that an injury to the person or property of another would be likely to result. Thomas (finding no basis for imposing liability for injuries inflicted by 8-week-old kitten).

NOTE: Contributory negligence on the part of the plaintiff will bar recovery for a claim based on the defendant's negligence.

Principle #3: The defendant violated a "safety statute" and the violation resulted in injury to the plaintiff.

Many cities and counties have "leash laws" and other restrictions on the care and keeping of animals enacted in an effort to protect the safety of people and their property. Under the legal principle of "negligence per se", a defendant may be held responsible for injuries resulting from a violation of such an ordinance or statute without any further showing of fault or negligence on the part of the defendant.

The plaintiff must prove

- That the defendant violated an ordinance or statute.
- The law does not require that defendant actually be convicted of violating the statute, but absent a conviction the judge must be careful to closely read the precise language of the law. In Dyson v. Stonestreet, 326 N.C. 798 (1990), the North Carolina Supreme Court held that an ordinance making it illegal for an owner "to permit" an animal to run at large required that the owner either negligently or knowingly did so; it was not enough merely to show that the animal ran loose. In that case, the owner put on evidence showing that the animal had previously responded

obediently to verbal commands. The Court said this evidence prevented a finding that the owner had violated the ordinance.

- That the statute is a “safety statute”, i.e., designed to protect public safety.
- That the plaintiff was a member of the class sought to be protected. (Example: When plaintiff was injured by defendant shooting at a trespassing dog in violation of a statute prohibiting cruelty to animals, statute sought to protect animals, not people.)
- That violation of the statute resulted in injury.
- That plaintiff suffered damages as result.

There are a number of state statutes, set out in G.S. Chs. 67 and 68, governing misdeeds of animals, the violation of which will give rise to a claim for damages based on negligence per se. Two of the more commonly violated are:

G.S. 67-1, which provides that the owner of a dog is liable for injury to livestock or fowls caused by the dog while off the owner’s premises, and

G.S. 67-12, providing that a person who allows a dog older than 6 months to roam at large at night is liable for resultant injury to persons or property.

A plaintiff who seeks to recover damages based on allegations of violation of a safety statute is responsible for identifying the particular statute providing the basis for his suit.

NOTE: Contributory negligence on the part of the plaintiff will bar recovery for injuries resulting from defendant’s negligence based on violation of a statute.

Damages

The damages recoverable in an action based on misdeeds of an animal do not differ from those recoverable in any other action for negligence. A plaintiff is entitled to recover *out-of-pocket costs*, such as medical bills and loss of income, as well as future damages that may be reasonably foreseen (need for ongoing medical care, loss of future income, etc.) An injured party is also entitled to recover for *pain and suffering*.

If the action is one for *damage to property*, the usual measure of damages depends upon the extent of damage. If the property is destroyed, damages would be the value of the item immediately before its destruction. A lesser degree of injury might justify damages based on cost of repair. *Note that emotional distress or mental suffering is not a compensable damage item in cases involving loss of property.*

Punitive damages may be awarded if the defendant’s conduct is so outrageous as to be *willful and wanton*. An owner who allows a vicious dog to run free, knowing that it is likely to attack someone, may be subject to punitive damages. *Hunt v. Hunt*, 86, N.C. App. 323 (1987).



Special Rule for Dogs: G.S. 67-4.1 (Dangerous Dog Statute)

If a dog is a “dangerous dog” as defined in G.S. 67-4.1, its owner is liable for any injury it inflicts on people or property, even if the owner did everything he could to avoid injury*.

What is a dangerous dog? A dog that

- Has without provocation killed or inflicted severe injury on a person, or
- been declared to be a *potentially dangerous dog* under procedure established by statute; or
- is owned for purpose of dog fighting, or is trained for dog fighting.

Severe injury is established by showing broken bones, disfiguring lacerations, cosmetic surgery, or hospitalization as result of injury.

What is the procedure for having a dog declared *potentially dangerous*?

The statute requires every city and county to designate a person or Board to handle citizen complaints about dangerous dogs. If a dog

- has caused severe injury as defined above, or
- killed or severely injured another animal while not on his owner’s property, or
- approached a person *in a vicious or terrorizing manner in an apparent attitude of attack* while not on his owner’s property, it meets the criteria for a *potentially dangerous dog*. The responsible person/board who determines a dog to be potentially dangerous gives written notice to the dog’s owner, who may appeal to an Appellate Board.

In an action based on this statute, the plaintiff must show:

- That the dog was a *dangerous dog*;
- That the dog injured plaintiff or plaintiff’s property;
- The amount of damages.

*(This is called *strict liability*.)